HONOURABLE SRI JUSTICE J.CHELAMESWAR
And
HONOURABLE SRI JUSTICE D.APPARAO

TUESDAY, EIGHTEENTH DAY OF JULY TWO THOUSAND SIX

WRIT PETITION No.11730 of 2006

Between:

Chenumalla Kumara Swamy,
Kamalapur. .. Petitioner

And

1. Chief Secretary to Government, Secretariat,
Hyderabad and three
others. ..Respondents

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ORDER: (Per Hon'ble Sri JC, J)**:**

This writ petition is filed with a prayer as follows:-

> "To issue a writ or order or direction particularly in the nature of writ of Habeas Corpus directing the respondent to produce the petitioner, the detenu i.e., Chenumalla Kumara Swamy, Son of Nagaiah, aged about 32 years, Occ.Coolie, R/o.Kamalapur (V), Kamalapur (M), Karimnagar District, now in the Central Prison, Warangal, before this Hon'ble Court and to order his release forthwith after declaring his detention order dated 25-03-2006 and G.O.Rt.No.2597 dated 19-05-2006 by 2nd and 1st respondents as illegal, void and against the provisions contemplated under the A.P.Prevention of dangerous activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, as against the provisions of the Criminal Procedure Code, as against the Indian Penal Code and against the provisions under Indian Evidence Act in the interest of justice."

2. One Chenumalla Kumara Swamy was detained by the proceedings of the 2nd respondent-District Collector and District Magistrate, Karimnagar, under the provisions of A.P.Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for brevity 'the Act'). The substance of the detention order dated 25-03-2006, issued by R-2, is that the detenu is a bootlegger as defined under Section 2 (b) of the Act. The further details of the detention order may not be necessary for the present purpose.

3. The learned counsel for the petitioner made various submissions challenging the detention order. The first is that the representation made by the petitioner to the Government was

rejected by the 1st respondent-Chief Secretary to Government through his order dated 23-05-2006. A copy of the same is filed along with this writ petition. Whereas the detention order came to be confirmed and the detention, which was initially for a period of three months, came to be extended for a period of 12 months by order dated 19-05-2006 vide G.O.Rt.No.2597 of General Administration (Law & Order.II) Department and therefore, the detention order is vitiated.

4. It is settled law that a person preventively detained has a right of representation under Article 22 (4) of the Constitution of India. It is a fundamental right that the person so detained is entitled to have his representation considered expeditiously without any delay and at any rate such consideration must precede the decision of the State to confirm the order of detention and before confirming the detention order, the State shall obtain the opinion of the Advisory Board as contemplated in Article 22 (4) of the Constitution of India.

5. Obviously in the present case, the representation came to be considered by the State after the State took a decision to confirm the detention. The Supreme Court in **VIMAL CHAND JAWANTRAJ JAIN v. PRADHAN AND OTHERS**[1], in this context, held as follows:-

> "There are thus two distinct safeguards provided to a detenu; one is that his case must be referred to an Advisory Board for its opinion if it is sought to detain him for a longer period than three months and the other is he should be afforded the earliest opportunity of making a representation against the order of detention and such representation should be considered by the detaining authority as early as possible before any order is made confirming the detention."

6. In the circumstances, the detention order in the instant

case is liable to be quashed. We, therefore, do not propose to examine the various other submissions made by the learned counsel for the petitioner challenging the detention order.

7. In the result, the Writ Petition is allowed. The Fourth respondent – Superintendent, Warangal District Central Prison, Warangal, is directed to release the petitioner-detenue viz., Chenumalla Kumara Swamy, forthwith. No costs.

(J.CHELAMESWAR, J)

(D.APPARAO, J)

July 18, 2006.
Kvr

[1] AIR 1979 SUPREME COURT 1501